

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

KING COUNTY,)	Case No. 05-3-0031
)	
Petitioner,)	(King County IV)
)	
and)	
)	
CITY OF RENTON,)	
)	
Intervener,)	
)	
v.)	
)	
SNOHOMISH COUNTY,)	ORDER ON MOTIONS
)	
Respondent,)	
)	
and)	
)	
SNO-KING ENVIRONMENTAL)	
ALLIANCE,)	
)	
Intervener.)	

I. BACKGROUND

On May 6, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**)¹ from King County and the City of Renton (**Petitioner** or **King County**). The matter was assigned CPSGMHB Case No. 05-3-0031, and is hereafter referred to as *King County IV v. Snohomish County*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioner challenges Snohomish County's adoption of Ordinance No. 05-029 (**Odor Ordinance**) and Ordinance No. 05-030 (**Seismic Ordinance**), development regulations in Snohomish County's Code. The basis for the challenge is noncompliance with several goals and the essential public facility requirements of the Growth Management Act (**GMA** or **Act**).

¹ The Board received *two filings* on the same day from the same Petitioners; the filings are entitled: "Petition for Review and Request for Declaratory Ruling and Order of Invalidity on Snohomish County Ordinances 05-029 and 05-030" (**King County PFR**) and "Joint Motion for Immediate Compliance Hearing; Declaratory Ruling; and Order of Invalidity on Snohomish County Ordinances 05-029 and 05-030; and Request for a Board Finding of Sanctionable Conduct" (**King County Motion for Hearing**). These two filings were discussed together at the prehearing conference.

On June 16, 2005, at the Prehearing Conference, the Board received “Snohomish County’s Index of the Record” (**Index**).

On June 20, 2005, the Board issued the “Prehearing Order and Order on Prehearing Motions” (PHO). The PHO set a schedule for filing motions; it also added a Legal Issue – Legal Issue No. 6 – pertaining to whether the Board had subject matter jurisdiction over the challenged Ordinances.

The Board received both motions to supplement the record and dispositive motions in this matter. The motions filed are listed *infra*. The Board will address the dispositive motions first, and then the motion to supplement.

On June 24, 2005, the Board received “Snohomish County’s Motion Re: Statement of Legal Issues in Prehearing Order” (**SnoCo Motion – Legal Issues**). In this motion, the County indicated that it intended to challenge Renton’s standing with a dispositive motion and to prevent an objection by Petitioners that the Legal Issue was not listed in the PHO, Snohomish County requested a Legal Issue related to the City of Renton’s standing be included. SnoCo Motion – Legal Issues, at 1-3.

On June 27, 2005, the Board received a “Notice of Unavailability of Counsel” indicating that Lawrence J. Warren would not be available July 5 through July 15, 2005 and August 1 through August 5, 2005.

Also on June 27, 2004, the Board conducted a telephonic conference among the parties and the question of whether “standing” needs to be alleged as a Legal Issue in the PFR or PHO was raised. The Board pointed to the following provision in the PHO, “The County may also file dispositive motions on other matters not discussed at the PHC.” PHO, at 10. The parties agreed that this provision in the PHO resolved the issue, and the Board need not respond to the SnoCo Motion – Legal Issues.

On July 11, 2005, the Board received: 1) “Snohomish County’s Dispositive Motions” with three attached exhibits (**SnoCo Motion – Dismiss**); 2) “Joint Motion to Affirm the Board’s Jurisdiction over Snohomish County Ordinances 05-029 (Odor Ordinance) and 05-030 (Seismic Ordinance)” (**King/Renton Re: Affirmation of Board Jurisdiction**); and 3) “King County’s Motion to Supplement the Record” (**King Motion – Supp.**) with an attached “Declaration of Patrick J. Mullaney” (**Mullaney Declaration**) and three attachments. The motion requests that four types of exhibits be admitted and that the Board take official notice of certain regulations.

On July 18, 2005, the Board received: 1) King County’s Response to Snohomish County’s Prehearing Dispositive Motions” (**King Response – Dismiss**) with an attached “Declaration of Patrick J. Schneider” (**Schneider Declaration**) and seven attached exhibits (A-G); 2) “Renton’s Response to Snohomish County’s Dispositive Motion Re: Standing” (**Renton Response – Dismiss**) with an attached “Declaration of Gregg Zimmerman in Support of Renton’s Motion to Intervene” (**Zimmerman Declaration**),

“Declaration of Jesse Tanner in Support of Renton’s Motion to Intervene” (**Tanner Declaration**) and four attached exhibits; 3) “Snohomish County’s Response to Joint Motion to Affirm Board’s Jurisdiction over Snohomish County Ordinance Nos. 05-029 and 05-030” (**SnoCo Response Re: Affirmation of Board Jurisdiction**) with one attached exhibit; 4) “Snohomish County’s Memorandum in Opposition to King County’s Motion to Supplement the Record” (**SnoCo Response – Supp.**) with one attachment; and 5) “Snohomish County’s Amended Index to the Record” (**Amended Index**).

On July 22, 2005, the Board received: 1) “Snohomish County’s Reply Re: Dispositive Motions and Motion to Strike Declaration of Patrick J. Schneider and Attachments thereto” (**SnoCo Reply – Dismiss & Strike**); 2) “Joint Reply in Support of Motion to Affirm the Board’s Jurisdiction over Snohomish County Ordinances 05-029 (Odor Ordinance) and 05-030 (Seismic Ordinance)” (**King/Renton Reply Re: Affirmation of Board’s Jurisdiction**) with attached “Declaration of Michael S. Schechter” (**Schechter Declaration**) and one attached exhibit;² and 3) “King County’s Reply Brief in Support of Motion to Supplement the Record” (**King Reply – Supp.**) with attached “Declaration of Patrick Mullaney in Support of King County’s Motion to Supplement the Record” (**2nd Mullaney Declaration**), “Declaration of Verna Bromley in Support of King County’s Motion to Supplement the Record” (**Bromley Declaration**).

On July 29, 2005, the Board received “King County’s Response to Snohomish County’s Motion to Strike Declaration of Patrick J. Schneider and Attachments thereto” (**King Response – Strike**).

On August 3, 2005, the Board received a letter from Laura C. Kisielius, Snohomish County Prosecutor, indicting that Dr. Yeats did not submit a letter to the SnoCo Planning and Development Committee on May 24, 2005. (**8/3/05 Letter**).

On August 5, 2005, the Board received a letter from Patrick J. Mullaney accepting Snohomish County’s explanation regarding the Dr. Yeats letter, and dropping the document from the motion to supplement the record.

II. DISCUSSION

A. Dispositive Motions

1. Renton’s Standing/Intervention:

Snohomish County asserts that the City of Renton did not allege the basis for standing in the Joint PFR as required by the Board’s rules, WAC 242-02-210(2)(d), and recent Board cases. SnoCo Motion – Dismiss, at 3-7. The City of Renton does not dispute that it

² The Schechter Declaration suggests that true and correct copies of the challenged ordinances are attached; but the attachment is a City of Edmonds Ordinance No. 3328 relating to “Social Card Rooms as Commercial Stimulants.” The Board fails to see the relevance of the Declaration or attached ordinance.

never alleged its basis for standing in the Joint PFR. Renton Response – Dismiss, at 1-5. Alternatively, the City of Renton seeks status as an Intervener pursuant to WAC 242-02-270. *Id.*, at 5-7. King County argues that Renton has participated in prior proceedings and that Snohomish County has not objected to Renton’s participation as an intervener, and concedes that Renton belongs in the case; therefore, any dismissal would be without substance. King Response – Dismiss, at 4-5. In reply, Snohomish County reiterates that Renton has not established GMA standing, but does not object or comment on Renton’s motion for intervention. SnoCo Reply – Dismiss & Strike, at 1-3.

Pursuant to WAC 242-02-210(2)(d), the Board has consistently required Petitioners to allege the basis for Petitioner’s standing in the PFR. Renton did not do so. *See* PFR, at 1-31. Therefore, the Board will **dismiss** the City of Renton from this proceeding *as a Petitioner*.

However, the City has moved for intervention. Snohomish County has not commented on this motion of the City. The Board finds that the granting of intervener status to the City of Renton is in the interest of justice and will not impair the orderly and prompt conduct of the proceedings; therefore, the Board **grants** the City of Renton’s motion to intervene.

Intervener City of Renton may file a prehearing brief in support of Petitioner King County in accordance with the briefing schedule set forth for “Petitioners” in the June 20, 2005 PHO. *See* PHO. Intervener City of Renton may brief all Legal Issues set forth in the PHO and respond to any further dispositive motions of Snohomish County. Petitioner King County, at its discretion, may share allotted time for oral argument at the Hearing on the Merits (**HOM**) with Intervener Renton.

The City of Renton is entitled to notice of any settlement discussions that occur between Petitioner King County and Respondent Snohomish County, and may participate in such discussions, if any. However, only Petitioner King County and Respondent Snohomish County need to reach agreement disposing of all or a portion of this case.

2. Legal Issue No. 6: *Are Ordinance Nos. 05-029 and 05-030 **development regulations**, as defined by RCW 36.70A.030(7), or otherwise included in the GMA, as being subject to review by the Board for compliance with the goals and requirements of the GMA?*

The Odor Ordinance – No. 05-029:

King County and Renton assert that the Odor Ordinance is a development regulation, as defined in RCW 36.70A.030(7),³ because it imposes controls on development or land use

³ RCW 36.70A.030(7) provides:

“Development regulations” or “regulation” means the controls placed on development or land use activities by a county or city, including but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances

activities. King/Renton Re: Affirmation of Board Jurisdiction, at 7. Snohomish County “does not contest the Board’s jurisdiction over the Odor Ordinance . . .” Snohomish County does not dispute that Ordinance No. 05-029 is a development regulation as defined in the GMA. SnoCo Response Re: Affirmation of Board Jurisdiction, at 2. In reply, King County and Renton note that Snohomish County “concedes that the Odor Ordinance is a development regulation.” King/Renton Reply Re: Affirmation of Board’s Jurisdiction, at 1. The Board agrees. **The Odor Ordinance** – Ordinance No. 05-029 – **is a development regulation** within the definition of RCW 36.70A.030(7) and subject to Board review.

The Seismic Ordinance – No. 05-030:

King County and Renton assert that the Seismic Ordinance is a development regulation, as defined in RCW 36.70A.030(7), because it imposes controls on development or land use activities; it regulates a critical area; it is an official control; and it is included within Snohomish County’s Unified Development Code. King/Renton Re: Affirmation of Board Jurisdiction, at 7-13.

Snohomish County counters that the Seismic Ordinance was adopted as an amendment to the County’s Building Code, and adopted pursuant to chapter 19.27 RCW, not chapter 36.70A RCW. SnoCo Response Re: Affirmation of Board Jurisdiction, at 3-8. The County contends that the Ordinance is not a critical areas ordinance, nor an official control. Instead, the County argues, it amends life and safety codes which are not included in the GMA’s definition of “development regulations.” *Id.* at 8-15.

In reply, King County argues that Snohomish County cannot avoid the requirements of the GMA by codifying the ordinance in a local code where development regulations are not ordinarily codified. King/Renton Reply Re: Affirmation of Board’s Jurisdiction, at 1. Petitioners note that Section 9 of Ordinance No. 05-030 acknowledges that the Ordinance is a development regulation. This section states, “. . . this emergency ordinance adopts development regulations . . .,” and references SCC 30.73.090, which requires compliance with RCW 36.70A.390. *Id.* at 2. RCW 36.70A.390 is within the GMA.

The Board agrees with King County and the City of Renton. Ordinance No. 05-030, while amending the County’s building code, does rely upon the GMA as one of the authorities for its enactment. More importantly, Section 6 of Ordinance No. 05-030 defines and locates seismic hazard areas without reference to the County’s critical areas regulations. The GMA clearly requires that geologically hazardous areas be identified and designated as part of the jurisdiction’s critical areas regulations. The “geologically hazardous area” designation is to indicate areas that “are not suited to the siting of

together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

commercial, residential, or industrial development *consistent with public health or safety concerns.*” RCW 36.70A.030(9), (emphasis supplied). Ordinance No. 05-030 clearly falls within these parameters of the GMA. *However, in the context of the present challenge, the Board’s GMA jurisdiction relates to the critical area itself and the permit processes involved, not necessarily the specific conditions that may be placed on construction of a structure within such a critical area – these aspects of a dispute are “project permit” related, which is clearly not within the Board’s jurisdiction.*

The Seismic Ordinance – Ordinance No. 05-030 – **is a development regulation**, within the definition of RCW 36.70A.030(7) and subject to Board review.

3. Snohomish County Dispositive Motions Re: Legal Issues

Motion to Dismiss Legal Issue 4, Re: the State Clean Air Act:

Legal Issue 4, as stated in Petitioner’s PFR and the PHO, at 15, provides as follows:

4. *Is the Odor Ordinance preempted by the Washington Clean Air Act that established the Puget Sound Clean Air Agency, which already directs permits and regulates air emissions from wastewater treatment plants?*

Snohomish County argues that the question posed by this issue is not one that falls within the Board’s jurisdiction to answer. The County contends that the Clean Air Act provisions are found within chapter 70-94 RCW, and are not among the statutes referenced in RCW 36.70A.280 that are subject to Board review; therefore the Board has no jurisdiction to determine whether the Odor Ordinance complies with, or is preempted by, the Clean Air Act. SnoCo Motion – Dismiss, at 7-9.

King County argues that “preemption is a constitutional issue, and recent case law now provides that Petitioners are required to exhaust their administrative remedies before this Board on their constitutional challenge.” King Response – Dismiss, at 5. The County goes on to discuss various cases related to preemption. *Id.* at 5-11.

In reply, Snohomish County takes issue with various points made in King County’s response brief. However, the only point relevant to the Board, notes that this Board does not have jurisdiction to resolve constitutional issues, *citing* numerous CPSGMHB cases. SnoCo Reply – Dismiss & Strike, at 3-7.

While the Odor Ordinance may be a development regulation subject to Board review, the Legal Issue posed by Petitioners is not one the Board has jurisdiction to answer. The Legal Issue makes no mention of whether the challenged action complies with the goals and requirements of the GMA – chapter 36.70A RCW, or the other statutes within the Board’s jurisdiction. Legal Issue No. 4 is **dismissed**.

Motion to Dismiss Legal Issues 1, 2, 3 and 5, Re: Ordinance No. 05-030 [Seismic Ordinance] as not being a development regulation:

As discussed *supra*, the Board has already determined that the Seismic Ordinance is a development regulation. The Board need not discuss this argument further here. Snohomish County's motion to dismiss Legal Issues 1, 2, 3 and 5, as they relate to the Seismic Ordinance is **denied**.

Motion to Dismiss Portions of Legal Issue 3, Re: consistency with Snohomish County-wide Planning Policies (CPPs) and RCW 36.70A.100:

Snohomish County moves to dismiss that portion of Legal Issue 3 alleging noncompliance with the County's CPPs and .100. Respondent argues that development regulations are not required to be consistent with CPPs and that .100 only requires inter-jurisdictional consistency with comprehensive plans, not development regulations. SnoCo Motion – Dismiss, at 13-17.

Petitioner agrees with Respondent that reference to RCW 36.70A.100 is not applicable to the challenged Ordinances, and concedes that such reference be struck. King Response – Dismiss, at 17. Additionally, King County agrees that “direct consistency with CPPs may be a sufficient basis, in and of itself, to invalidate the 2005 Ordinances, the CPPs are listed in Legal Issue No. 3 to reflect the fact that King County intends to use them as an interpretive tool to explain why the 2005 Ordinances violate the [Snohomish] County's own comprehensive plan and are inconsistent with both the Plan and CPPs.” King Response – Dismiss, at 15.

In reply, Snohomish County argues that Petitioner has cited to no authority requiring development regulations to be consistent with CPPs; therefore, the reference to consistency with CPPs must be struck. SnoCo Reply – Dismiss & Strike, at 7-8. Respondent does acknowledge that Petitioner may include reference to CPPs in its argument, but that does not change the fact that direct consistency between development regulations and CPPs is not a requirement of the Act. *Id.*

The Board agrees with Respondent. While development regulations must be consistent with, and implement comprehensive plans [*e.g.* RCW 36.70A.040], and comprehensive plans must be consistent with the CPPs [*i.e.* RCW 36.70A.210], development regulations are not “directly” required to be consistent with CPPs. The Board has previously determined, and continues to adhere to the following precedent:

The CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. Thus, the consistency required by RCW 36.70A.100 and RCW 36.70A.210 is an external consistency between comprehensive plans, The CPPs do NOT speak directly to implementing land use regulations of cities and counties.

City of Snoqualmie and City of Issaquah v. King County, (Snoqualmie), CPSGPHB Case No. 92-3-0004, Final Decision and Order, (Mar. 1, 1993), at 16. Additionally, the Board’s precedent also states:

A local jurisdiction’s comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities.

The Children’s Alliance and Low Income Housing Institute v. City of Bellevue, (Children’s I), CPSGMHB Case NO. 95-3-0011, Order Partially Granting Bellevue’s Dispositive Motion, (May 17, 1995), at 12.

Snohomish County’s motion to strike reference to compliance with RCW 36.70A.100 and consistency with the CPPs listed in Legal Issue 3 is **granted**. However, this does not preclude Petitioner from using CPPs in argument.

Motion to Dismiss Portion of Legal Issue 5, Re: .RCW36.70A.200(1):

Snohomish County moves to strike that portion of Legal Issue 5 pertaining to RCW 36.70A.200(1), since that section of the Act only pertains to comprehensive plans, not development regulations. SnoCo Motion – Dismiss, at 17-18. King County agrees, noting that there was a typographical error in their pleading. Petitioner requests that the reference in Legal Issue 5 [requesting invalidity] be revised to allege violations of RCW 36.70A.~~020~~(1, 4, 5, and 10), rather than RCW 36.70A.~~200~~(1, 4, 5 and 10). King Response – Dismiss, at 17-19. Snohomish County objects to this “correction” and asserts that King County is attempting to reform the issues from the PFR and PHO. SnoCo Reply – Dismiss & Strike, at 9-11.

The Board reads Legal Issue No. 5 as a request for invalidity – “Should the Board issue a finding of invalidity . . .” PHO, Legal Issue 5, at 15. The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003), at 18.

If Petitioners choose to include a prayer for relief as a Legal Issue, they may do so. However, since the request for invalidity need not be stated as a Legal Issue, the Board will not be confined by its phrasing if it is posed as a Legal Issue. If the Board finds that either, or both, challenged ordinances do not comply with the goals or requirements of the Act, and remands to the County, the Board will decide whether a determination of invalidity is a proper remedy. Goals listed in the PFR will not confine the Board’s ability to fashion an appropriate remedy if substantial interference with the goals of the Act is apparent to the Board.

Therefore, the Board advises the parties that in lieu of disputing the wording of Legal Issue 5, they focus on the remaining Legal Issues in this matter, which challenge compliance with the Act. Only if this case is made will the Board consider whether there is substantial interference with the goals of the GMA, meriting a determination of invalidity. **The Board will strike Legal Issue 5.**

However, the Board fully expects Petitioner to argue that Respondent has not complied with the requirements of the GMA, as set forth in the remaining Legal Issues, and to articulate why such alleged “noncompliance” arises to substantial interference with certain goals of the Act. Likewise, the Board expects the Respondent to counter the Petitioner’s arguments and refute that there is substantial interference with any GMA goal.

B. Motions to Supplement the Record and Strike

1. King County Motion to Supplement the Record:

King County asks that the Board supplement the record with seven items as indicated in the Summary Table, *infra*. Snohomish County does not object to the first three items, and has included them in the Amended Index.⁴ The Board notes their inclusion as items in the Amended Index of the record. However, Snohomish County objects to items 4-7.

Item 4 – All documents and communications related to adoption of the emergency ordinances: King County fails to provide the Board with copies of any of the items it wishes to have included in the record. Nonetheless, King County contends that relevant communications took place prior to Snohomish County’s adoption of the emergency ordinances or the subsequent hearing and have been kept from the public. Therefore, Petitioner moves to add these unidentified items to the record to assist the Board in “judging whether an emergency actually existed.” King Motion – Supp., at 2 and 6. Snohomish County notes that King County could have sought the production of documents, if they existed, through a Public Records request, which King County did not do. Further, Snohomish County contends that “[It] has included in the Amended Index all documents and/or other communications that were in the public record developed by Snohomish County as provided in RCW 36.70A.290(4).” SnoCo Response – Supp., at 3. Respondent also contends that “off-the-record and informal communications do not constitute meaningful public participation since they are not part of the decision record . . .” *Id.* citing, this Board’s decision in *Ramey v. City of Seattle*, CPSGMHB Case No. 99-3-0002, Order on Motion to Reconsider, (Dec. 15, 2000), at 10. In reply, King County still

⁴ The Board notes that the 8/3/05 Letter indicates that Dr. Yeats did not submit a letter to the County on May 24, 2005. The attachments to that letter [Minutes of the 5/24/05 Planning and Community Development Committee meeting (Attachment A) and an article from the March 2005 AEG News 48(1), entitled “Paleoseismology of Surface Ruptures: Research Tool or Standard of Practice? (Attachment B)]. These items are included in the record as part of the County’s “Amended Index – Item A3.” If the letter does not exist, it obviously is not contained within the record.

contends that the unidentified documents and communications should be part of the record. King Reply – Supp., at 2-7. While King County harbors some suspicion of Snohomish County, it has provided nothing for the Board to evaluate in terms of an item being necessary or of substantial assistance to the Board in reaching its decision. Therefore, King County’s motion to supplement the record with unspecified documents and communications is **denied**.

Item 5 – The “Orange Book.”: It is not disputed that this document outlines DOE’s approach for its regulatory review of wastewater treatment facilities. WAC 242-02-660 and 670 permits the Board to take official notice of such documents. The Board will **take notice** of the “Orange Book.” If this exhibit is referenced in briefing, Petitioner shall provide copies along with Petitioner’s PHB.

Item 6 – Facilities Plan for Brightwater: The Board does not have jurisdiction to review project permits, nor to review regulations “as applied.” King County’s motion to supplement this record with this item is **denied**.

Item 7 – PSCAA regulations: WAC 242-02-660 permits the Board to take official notice of such laws and regulations. The Board **takes notice** of the PSCAA regulations.

2. Snohomish County Motion to Strike:

In responding to Snohomish County’s motion to dismiss, King County filed its brief and attached the Schneider Declaration and seven exhibits (A-G). *See* King County Response – Dismiss, Attachments A-G. Snohomish County moves to strike the Schneider Declaration and Attachments A-G because King County never moves to supplement the record with these items, or alternatively, Attachments A-E relate to the Clean Air Act and are referenced in relation to the “preemption” discussion. SnoCo Reply – Dismiss & Strike, at 11-12.

To a degree, the Board agrees with Snohomish County. Attachments A-G to the King County Response – Dismiss, includes items that the Board can take official notice of per WAC 242-02-660 and 670. However, Attachments A, B, C, D, and E are all referenced in King County’s argument related to preemption and the Clean Air Act. Consequently, the Board will **strike** the Schneider Declaration and Attachments A through E. The Board takes **official notice** of Attachments F [Snohomish County website for its new building and construction codes] and G [City of Kent Ordinance No. 3622]. The parties are advised that it is up to them to explain the relevancy, if any, of these items in their briefing on the remaining issues in this matter.

Summary Table

Proposed Exhibit: Documents	Ruling
King County Items:	
1. Transcript of 4/18/05 County Council	<i>Proceedings on CD included in</i>

hearing	<i>Amended Index – Items A1 and A2</i> <i>[Petitioner may provide a transcript, or portion thereof, as long as it is certified as being a true and correct transcript of the proceeding.]</i>
2. Agenda and all written documents provided by Dr. Robert Yeats and Craig Weaver at the May 24, 2005 Committee meeting.	Included in <i>Amended Index</i> – Item A3
3. Comparison of Snohomish County and King County Odor Control information.	Included in <i>Amended Index</i> – Item A4
4. All documents or communications related to the emergency ordinances.	Denied
5. DOE Criteria of Sewage Works Design [Orange Book].	Board takes notice – Supp. Ex. 1
6. Facilities Plan for Brightwater, as approved by DOE.	Denied
7. Puget Sound Clean Air Agency (PSCAA) regulations.	Board takes notice – Supp. Ex. 2
Snohomish County Items [Motion to Strike]	
1. Schneider Declaration and Attachments A through E	Motion to strike is granted
2. Attachments F [Snohomish County website for in new building and construction codes]	Motion to strike denied – Board takes notice – Supp. Ex. 3
3. Attachment G [City of Kent Ordinance No. 3622].	Motion to strike denied – Board takes notice – Supp. Ex. 4

The parties are cautioned that **each exhibit must be relevant** to the issues before the Board. An items listing on the Index as a part of the record below, or its admission as a supplemental exhibit, does not necessarily mean that a specific exhibit is relevant to the legal issues, as set forth in the PHO.

The items included in the Record, as discussed *supra* and noted in the Summary Table, have been determined to be necessary or may be of substantial assistance to the Board in reaching its decision.

The Record for CPSGMHB Case No. 05-3-0031 consists of the items listed in “Snohomish County’s Amended Index to the Record” (**Amended Index**) and the items included in the Record as noted in the Summary Table. These documents constitute the Record to this proceeding. Each exhibit filed with the Board shall reference the document numbers as indicated in the Index or as specified above. Exhibits shall be filed with briefs.

III. ORDER

Based upon review of the Petition for Review, the briefs and materials submitted by the parties, the GMA, the Board's Rules of Practice and Procedure, prior decisions of this Board and other Growth Management Hearings Boards, case law, and having deliberated and considered the matter, the Board enters the following ORDER:

- Snohomish County's motion to dismiss the City of Renton as a Petitioner from this matter is **granted**. The City of Renton is **dismissed** as a Petitioner from this matter, for failure to plead the basis of GMA standing in the petition for review.
- The City of Renton's motion to intervene is **granted**.
- The Odor Ordinance [No. 05-029] and the Seismic Ordinance [No. 05-030] **are development regulations**, as defined in RCW 36.70A.030(7), generally subject to review by the Board.
- The Board lacks subject matter jurisdiction to address Legal Issue 4. Legal Issue 4 is **dismissed**, and will not be addressed further in this matter.
- Snohomish County's motion to dismiss Legal Issues 1, 2, 3 and 5, as they relate to the Seismic Ordinance [Ordinance No. 05-030] is **denied**.
- Snohomish County's motion to strike reference to compliance with RCW 36.70A.100 and the CPPs listed in Legal Issue 3 is **granted**.
- The Board **strikes** Legal Issue 5. However, as discussed *supra*, the parties may argue whether alleged noncompliance with the Act substantially interferes with any of the goals of the Act, and merits a Board determination of invalidity.
- The remaining Legal Issues, or portions thereof, in dispute in this proceeding are set forth in attached Appendix A [shows struck language], or Appendix B [clean copy].
- Snohomish County's motion to Strike the Schneider Declaration and Attachments A-E is **granted**. However, the Board takes **official notice** of Attachments F and G.
- The record for this matter, *King County IV v. Snohomish County*, CPSGMHB Case No. 05-3-0031, is as shown on Snohomish County's Amended Index as supplemented in this Order and indicated in the Summary Table, *supra*.

So ORDERED this 8th day of August, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member – Presiding Officer

Bruce C. Laing, FAICP
Board Member

Margaret A. Pageler
Board Member

APPENDIX A

King County v. Snohomish County [Intervenor – City of Renton] (**King County IV**)
CPSGMHB Case No. 05-3-0031

LEGAL ISSUES

[From 6/20/05 PHO, and incorporating motions decisions]

1. *Do Snohomish County's Odor and Seismic Ordinances (Ordinance Nos. 05-029 and 05-030) violate RCW 36.70A.020(7), RCW 36.70A.020(12) and RCW 36.70A.200(5), and the Board's October 13, 2003 FDO, the Board's May 26, 2004 Compliance Order, Judge Casey's Appeal Order, and the GMA, including RCW 36.70A.200(5) and ~~RCW 36.70A.120~~,⁵ by imposing vague and unreasonable conditions and processes on EPFs such that it is impossible or impracticable to site such EPF facilities in Snohomish County?*
2. *Did Snohomish County violate the requirements of SEPA, including RCW 43.21C.030(2)(c), WAC 197-11-310(1), and WAC 197-11-315, by failing to prepare an environmental checklist, failing to make a threshold determination, and by wrongfully claiming that the adoption of Ordinance Nos. 05-029 and 05-030 were categorically exempt from SEPA compliance under the SEPA "emergency exemption" (WAC 197-11-880), which exempts actions that must be undertaken "immediately or within a time too short to allow full (SEPA) compliance . . . to avoid an imminent threat to public health or safety, to prevent an imminent danger to public health or private property, or to prevent an imminent threat of serious environmental degradation?"*
3. *Did Snohomish County violate the GMA's consistency requirements by adopting the 2005 Ordinances [i.e. 05-029 and 05-030], which are inconsistent with several Snohomish County comprehensive plan policies, ~~CPPs, and RCW 36.70A.100~~⁶? In particular, those Snohomish County policies are:*
 - *Snohomish County General Policy Plan: CF-20, CF-21, Goal CF-8, Objective CF-8.A, Appendix B-EPF, LU-2.C.3, Goal CF-8, Goal CF-11, CF 11.A.1 and A.2, Goal UT-1, Goal UT-3, Objective IC-1.E, Goal ED-1, Goal UT-3.A,*

⁵ The Board asked that references to Plan Policies and CPPs be provided (as indicated in Legal Issue 3), not that stated issues in the PFR be revised. Reference to RCW 36.70A.120 was not within the scope of the issues framed in the May 6, 2005 PFR and broadens the scope of the challenge. Therefore, it is not included.

⁶ Pursuant to this Order on Motions, as discussed *supra*, these portions [CPP and .100 references] of Legal Issue 3 are deleted and will not be considered by the Board.

*Objective UT-1.B, UT-1.B.2, Objective ED-1.A, ED-1.A.1, Objective ED-1.B, Objective NE-1.B and C, LU-2.C.3, Goal UT-3.A and Objective UT-1.B.*⁷

- ~~• *Snohomish County Countywide Planning Policies (CPPs): OD-1, OD-6, HO-2, HO-3, CR-3 and UG-8.*⁸~~

- ~~4. *Is the Odor Ordinance preempted by the Washington Clean Air Act that established the Puget Sound Clean Air Agency, which already permits and regulates air emissions from wastewater treatment plants?*⁹~~
- ~~5. *Should the Board issue a further finding of invalidity because Snohomish County's adoption of Ordinance Nos. 05-029 and 05-030 violate RCW 36.70A.302(7), RCW 36.70A.200(5), were not guided by RCW 36.70A.020(7) and (12) and also violate RCW 36.70A.200(1, 4, 6 and 10) were inconsistent with the Board's FDO decision and Compliance Order, and because the continued validity of the 2005 Ordinances would substantially interfere with the fulfillment of the Goals of the GMA?*¹⁰~~
- ~~6. *Are Ordinance Nos. 05-029 and 05-030 development regulations, as defined in RCW 36.70A.030(7), or otherwise included in the GMA, as being subject to review by the Board for compliance with the goals and requirements of the GMA?*¹¹~~

⁷ Any discrepancies between the Plan Goals, Objectives and Policies cited here and the 6/17/05 submittal of King County and the City of Renton shall be resolved by relying upon the 6/17/05 submittal.

⁸ See footnote 5, *supra*.

⁹ The Board asked that references to Plan Policies and CPPs be provided (as indicated in Legal Issue 3), not that stated issues in the PFR be revised. Issue 4 was restated to change the scope of the original Legal Issue 4. Legal Issue 4, as stated in this PHO, reflects the original issue statement in the PFR, not the version as revised in the 6/17/05 submittal. Pursuant to this Order on Motions, as discussed *supra*, Legal Issue 4 is struck in its entirety and will not be considered by the Board.

¹⁰ While the Board is striking Legal Issue 5, pertaining to the request for invalidity, the parties may still argue whether a determination of invalidity should be entered as a remedy by the Board. As discussed *supra*, invalidity, as a remedy, need not be set forth as Legal Issue in the PFR or PHO.

¹¹ This Legal Issue was posed by the Board so that the parties could address it in the motions phase of the Board's process. This Order addresses Legal Issue 6, therefore it is no longer germane to the remainder of this proceeding, and is struck.

APPENDIX B

LEGAL ISSUES

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1. *Do Snohomish County's Odor and Seismic Ordinances (Ordinance Nos. 05-029 and 05-030) violate RCW 36.70A.020(7), RCW 36.70A.020(12) and RCW 36.70A.200(5), and the Board's October 13, 2003 FDO, the Board's May 26, 2004 Compliance Order, Judge Casey's Appeal Order, and the GMA, including RCW 36.70A.200(5) by imposing vague and unreasonable conditions and processes on EPFs such that it is impossible or impracticable to site such EPF facilities in Snohomish County?*
2. *Did Snohomish County violate the requirements of SEPA, including RCW 43.21C.030(2)(c), WAC 197-11-310(1), and WAC 197-11-315, by failing to prepare an environmental checklist, failing to make a threshold determination, and by wrongfully claiming that the adoption of Ordinance Nos. 05-029 and 05-030 were categorically exempt from SEPA compliance under the SEPA "emergency exemption" (WAC 197-11-880), which exempts actions that must be undertaken "immediately or within a time too short to allow full (SEPA) compliance . . . to avoid an imminent threat to public health or safety, to prevent an imminent danger to public health or private property, or to prevent an imminent threat of serious environmental degradation?*
3. *Did Snohomish County violate the GMA's consistency requirements by adopting the 2005 Ordinances [i.e. 05-029 and 05-030], which are inconsistent with several Snohomish County comprehensive plan policies? In particular, those Snohomish County policies are:*
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¹² Any discrepancies between the Plan Goals, Objectives and Policies cited here and the 6/17/05 submittal of King County and the City of Renton shall be resolved by relying upon the 6/17/05 submittal.